

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

)
)
Amendment of the Commission's)
Rules To Establish Part 27, the)
Wireless Communications Service)
("WCS"))

GN Docket No. 96-228

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COMMENTS OF GTE

GTE Service Corporation and its telephone
and wireless companies

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SUMMARY

GTE believes that the Commission should adopt rules governing WCS that promote the greatest possible flexibility to react to market demand, while at the same time ensuring that providers of similar services are subject to similar regulatory treatment. GTE supports the Commission's proposal to permit a WCS licensee to use WCS spectrum for any permitted use within the allocation categories of fixed, mobile, radiolocation, and satellite DARS.

GTE supports dividing WCS spectrum into license areas based on Rand McNally Basic Trading Areas ("BTAs") and into spectrum blocks of 10 MHz.

GTE believes that the treatment of WCS licensees with respect to the spectrum cap should be consistent with its treatment of broadband PCS, cellular, and enhanced SMR licensees. Given that the FCC has elected to retain a spectrum cap for CMRS licensees, *in order to maintain regulatory parity, the Commission must subject WCS licensees to the same spectrum aggregation limits.*

GTE supports the Commission's proposal to permit WCS licensees to partition their service areas and to disaggregate their spectrum. However, GTE opposes any geographic limits to the size of the partitioned area. While geopolitical boundaries such as county lines might make sense in most cases, there is no reason to prevent partitioning WCS spectrum into smaller or differently drawn geographic areas.

GTE supports the Commission's proposal for a ten year license term. Finally, GTE does not oppose the Commission's proposal to create a presumption that all services offered over WCS spectrum are CMRS, so long as the Commission establishes procedures to enable entities to rebut that presumption.

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COMMENTS OF GTE

GTE Service Corporation on behalf of its telephone and wireless companies ("GTE") hereby submits comments in response to the *Notice of Proposed Rulemaking* ("*Notice*") adopted by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceeding.¹ In the *Notice*, the Commission seeks comment on its proposal to allocate the 2305-2320 and 2345-2360 MHz bands to fixed, mobile, radiolocation or satellite Digital Audio Radio Services (satellite "DARS") on a primary basis for a new Wireless Communications Service ("WCS"). In particular, the Commission asks for information regarding the licensing plan and service and technical rules that will apply to WCS.

I. Discussion

GTE currently provides telecommunications services to millions of subscribers world-wide by means of wireline and wireless technologies. GTE has been a leader in

¹ Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS") *Notice of Proposed Rulemaking*, GN Docket No. 96-228, FCC 96-441 (released November 12, 1996).

developing and applying new technology in ways that meet the needs of its subscribers in a reliable and efficient manner. It is with this experience and perspective that GTE urges the Commission to establish WCS rules that provide licensees the flexibility to use this valuable resource to serve the public interest in the most technically and economically efficient manner.

At the same time, the Commission must consider its mandate deriving from Congress' adoption of the Omnibus Budget and Reconciliation Act of 1993 ("OBRA").² There, Congress imposed a duty on the Commission to ensure that competitors in the commercial mobile radio services ("CMRS") are subject to similar regulation.³ In keeping with this mandate, the Commission must be mindful in this proceeding not to confer a competitive advantage on WCS licensees. In particular, as discussed below, given that WCS spectrum will be available for CMRS, the Commission should adopt rules for WCS to ensure that CMRS provided over WCS spectrum is regulated similar to other CMRS. To the extent that the Commission adopts rules giving WCS licensees greater flexibility than other CMRS licensees, the Commission should immediately consider extending such flexibility to licensees in the broadband commercial mobile radio services.

² Pub. L. No. 103-66, Title VI, § 6002(b)(2)(A), 6002(b)(2)(B), 107 stat. 312, 392 (1993) (codified in principal part at 47 U.S.C. § 332).

³ See Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services, *Second Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 1411 (1994).

A. Permitted Services

GTE supports the Commission's proposal "to permit a WCS licensee to use this spectrum for any permitted use within any of the allocation categories of fixed, mobile, radiolocation, and satellite DARS, subject to international requirements and coordination."⁴ Allowing for a wide variety of services, the specific mix of which will be driven by the market place, is the only way to assure that WCS will serve the highest public interest in the most efficient manner. Most, if not all, limitations on the type of services WCS licensees can provide will either prove to be completely unnecessary or costly unintentional barriers to meeting the evolving needs of telecommunications users. Should it later be determined that allowing a specific service to be offered on WCS spectrum is clearly not in the public interest, the Commission can act on an exception basis to limit that specific service, while not curtailing the remaining services that could be offered by WCS licensees.

B. Licensed Service Areas

The Commission seeks comment on the appropriate license service areas for WCS. The Commission believes that, given the short period of time it has to auction the WCS licenses, larger geographic service areas would facilitate the introduction of WCS in the most rapid and efficient manner. The Commission seeks comment, in particular, on whether WCS should be licensed on the basis of the 51 Major Trading

⁴ Notice at 9.

Areas (“MTAs”) defined for PCS, regional service areas similar to the 5 regions adopted for narrowband PCS, or on a nationwide basis.⁵

Rather than the license areas discussed in the *Notice*, GTE supports WCS license areas based on Rand McNally Basic Trading Areas (“BTAs”). GTE believes that smaller license areas provide the greatest flexibility for licensees, because smaller areas enable potential service providers to acquire spectrum to fit a particular service need in a particular area. Providers wanting to use WCS spectrum to serve a particular need in a community may not otherwise do so if, in order to obtain the spectrum, they must acquire the spectrum for a substantially larger geographic area than they need. GTE is also concerned that nationwide or other large license areas may be of a granularity that will not result in the optimum mix of services for large portions of the marketplace. Specifically, GTE is concerned that large license areas will result in the effective exclusion of sparsely populated, rural areas in favor of the more profitable and easier serviced metropolitan areas. BTAs present an approach that is more likely to be responsive to rural areas than would either of the larger alternatives.

Should larger license areas prove necessary to effectively provide particular services using WCS spectrum – which, in GTE’s opinion, is unlikely -- several BTAs can be aggregated to obtain the license area desired. It may prove far more cost effective to assemble BTAs into a larger serving areas than to successfully acquire a larger geographic area license and have to address those portions of the region for which no immediate plans were made. The Commission can maximize WCS flexibility by

⁵ *Id.* at 7-8.

establishing a license size that is responsive to market forces, yet still preserve the ability of licensees to aggregate licensees when there are economic reasons to do so.

GTE does not believe that licensing WCS on a BTA basis makes meeting the September 30, 1997 statutory deadline for depositing all proceeds from the WCS spectrum auction impossible. While auctioning up to three spectrum blocks in 493 BTAs is certainly more complex than auctioning on an MTA or other larger area basis, given the Commission's recent experience in conducting spectrum auctions, dividing the WCS spectrum into BTA-sized areas will not prevent the Commission from meeting the statutory deadline.⁶

C. Amount of Spectrum per License

GTE supports assigning WCS spectrum in three 10 MHz blocks in the proposed bands. Each license would consist of 5 MHz in the 2305-2320 band paired with 5 MHz in the 2345-2360 band. By establishing a structure that allows for as many as three WCS competitors in each market, the Commission will allow market forces in each serving area to determine the most efficient use of the spectrum on a serving area by serving area basis. In determining the appropriate size of the spectrum blocks to be auctioned, the Commission must balance the goals of maximizing competition, expediting the initial licensing of WCS, and providing ample flexibility to support the variety of services possible under WCS. GTE believes that dividing WCS spectrum into 10 MHz blocks best balances these concerns.

⁶ Should the Commission decide to pick from only the three geographic area alternatives discussed in the *Notice*, given GTE's preference for smaller geographic license areas, GTE would prefer dividing the spectrum on an MTA rather than a regional or nationwide basis.

First, to the extent that WCS spectrum is used to provide services distinct from those offered over other licensed spectrum, having as many as three WCS service providers in each market will help to ensure that competition exists for any such services.

Second, while completing the auction of WCS in the time required by the Act is a concern, as noted above, given the experience that the Commission and the industry have gained in earlier spectrum auctions, auctioning three licenses in each of the 493 BTAs in the allotted time frame is certainly an achievable task.

Third, 10 MHz of spectrum per license provides the most flexibility for potential applicants. Smaller spectrum blocks will enable entities to use WCS spectrum to augment existing service needs in a particular market and also should be adequate for most WCS applications. Should a specific application require more than 10 MHz, the applicant can aggregate two or more licenses in the specific serving areas required.

D. CMRS Spectrum Cap

The Commission seeks comment on whether WCS spectrum used to provide CMRS should count against the 45 MHz spectrum cap that applies to certain CMRS licensees.⁷ The CMRS spectrum cap was implemented by the Commission as a device intended to discourage anti-competitive behavior and to encourage innovation and efficiency. As amended, the CMRS spectrum cap prevents licensees in the broadband PCS, cellular or specialized mobile radio ("SMR") services regulated as CMRS from

⁷ Notice at 15.

holding an attributable interest in a total of more than 45 MHz of spectrum in any geographic area.⁸

GTE believes that the treatment of WCS licensees with respect to the spectrum cap should be consistent with its treatment of broadband PCS, cellular, and enhanced SMR licensees. In the Commission's recent proceeding considering amendments to the CMRS spectrum cap, GTE commented that spectrum caps were not necessary on a going-forward basis. GTE argued that spectrum aggregation limits unduly restrain the legitimate business activities of licensees and that there is no evidence that licensees will behave in an anticompetitive manner if allowed to acquire spectrum on an unrestricted basis.⁹ However, given that the FCC has elected to retain a spectrum cap for CMRS licensees, in order to maintain regulatory parity, the Commission must subject WCS licensees to the same spectrum aggregation limits.

E. Disaggregation and Partitioning

The Commission proposes to allow WCS licensees to partition their service areas into smaller geographic areas and to disaggregate their spectrum into smaller blocks. The Commission also seeks comment, consistent with the approach proposed for CMRS licensees, on whether to permit geographic partitioning along county lines and spectrum disaggregation to a minimum of 1 MHz. Finally, the Commission

⁸ *Id.* at 14, *citing* 47 C.F.R. § 20.6(a).

⁹ Amendment of Part 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59; Amendment of the Commission's Cellular PCS Cross-Ownership Rules, GN Docket 90-314, Comments of GTE Service Corporation (filed April 15, 1996).

proposes to allow WCS licensees to franchise portions of their spectrum and geographic service areas on a leased basis.¹⁰

GTE supports the Commission's proposal to permit WCS licensees to partition their service areas and to disaggregate their spectrum. GTE previously commented, in the context of CMRS partitioning and disaggregation, that liberal partitioning and disaggregation rules promote diversity of services and ownership.¹¹ GTE also agrees with the Commission that the ability to partition and disaggregate WCS spectrum will assist telephone companies serving rural areas.

GTE opposes any geographic limits to the size of the partitioned area. While geopolitical boundaries such as county lines might make sense in most cases, there is no reason to prevent partitioning WCS spectrum into smaller or differently drawn geographic areas. Indeed, given that many telephone company rural service areas do not encompass an entire county, limiting geographic partitioning to county lines may impair the ability of rural telephone companies to obtain and use spectrum in the most efficient manner to better serve customers. GTE believes that licensees should be allowed to partition their licenses into any geographic area that makes business sense so long as the technical rules that prevent harmful interference are met. Entities should not be required to seek waiver of FCC Rules in order to deviate from county lines or other geopolitical boundaries when partitioning.

¹⁰ Notice at 15-16.

¹¹ Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees, WT Docket No. 96-148, Comments of GTE Service Corporation (filed August 15, 1996).

GTE takes no position with regard to the Commission's proposal to allow license franchising. However, should the Commission adopt this proposal, regulatory parity demands that other CMRS licensees be given this opportunity as well.

F. License Term

GTE supports the Commission's proposal for a ten year license term. In addition, should a WCS licensee disaggregate or partition part of its original license, the party receiving the disaggregated or partitioned spectrum should have a reasonable expectation of retaining the use of their spectrum for the full term of the WCS licensee's original term. While the party receiving the disaggregated or partitioned spectrum cannot expect a license term longer than the term of the original licensee, nothing should limit the term of their use of the spectrum to less than the original licensee's term.

G. Regulatory Status and Safeguards

The Commission proposes to determine the regulatory status of WCS licensees based on the applicant's description of the services it will provide.¹² The Commission also proposes to establish a presumption that WCS providers will likely offer CMRS service.¹³ While GTE does not oppose the Commission's proposals, GTE urges the Commission to establish procedures to enable interested parties to rebut the presumption and show that the service being provided is deserving of a different regulatory treatment.

¹² *Id* at 32.

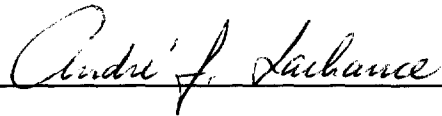
¹³ *Id.*

II. Conclusion

The Commission should adopt rules governing WCS that promote the greatest possible flexibility to react to market demand, while at the same time ensuring that providers of similar services are subject to similar regulatory treatment.

Respectfully submitted,

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